

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 13289, of Ulysses G. Auger, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from specialty retail grocery store, pizza carry-out, no seats, first floor to a restaurant and carry-out, seventy seats, first floor in an SP-2 District at the premises 1245 and 1247 20th Street, N.W, (Square 116, Lot 809).

HEARING DATE: July 30, 1980  
DECISION DATE: September 3, 1980

FINDINGS OF FACT:

1. The subject property is located in an SP-2 District on the east side of 20th Street between M and N Streets, N.W.
2. The subject property is improved with a one story brick building which carries two addresses, 1245 and 1247 20th Street, N.W. The building is divided into its two parts only by an interior partition.
3. The premises known as 1245 20th Street, N.W. is presently vacant. Its last recorded use was a specialty retail grocery store operating under Certificate of Occupancy No. B-79723, dated October 6, 1971. That Certificate of Occupancy was issued pursuant to a decision of this Board in application No. 10916, by Order dated October 6, 1971.
4. The premises known as 1247 20th Street N.W., is presently occupied by a pizza carry-out known as "Giorgio's Pizza." This use is operating under Certificate of Occupancy No. B-104475, dated December 22, 1977. That Certificate of Occupancy was issued pursuant to a decision of this Board dated June 10, 1976.
5. The application proposes to remove the center portion which divides the building into two stores and operate one business on the site. The operator of the present pizza carry-out, Nicholas Xereas, would use the entire premises, and would provide tables and chairs to accommodate seventy persons in the area formerly occupied by the grocery store. The present pizza carry-out has no seats. The carry-out business would also be continued.

6. A retail grocery store is a use which is first permitted in a C-1 District. A restaurant is also permitted in a C-1 District.

7. The subject premises is one of a row of buildings in the SP-2 District, all of which are used for non-conforming commercial purposes. There are two other existing restaurants in that row.

8. The restaurant/carry-out would operate between the hours of 11 a.m. and 10 p.m.

9. The area within which the subject property is located is primarily developed with high-density buildings. There are large office buildings in the C-3-C District to the south, and a high-rise SP office building to the rear. There are also apartment buildings further to the north and west.

10. The present pizza carryout is a neighborhood facility, serving primarily the occupants of nearby office buildings, and doing most of its business for lunch. It is not anticipated that the character will change significantly if seating capacity is added.

11. The large majority of the present patrons of the carry-out arrives on foot. There is little automobile traffic associated with the present use. It is not anticipated that the mode of travel to the combined carryout/restaurant will change significantly.

12. For patrons who do arrive by automobile, there is existing off-street parking available in garages in the basements of nearby office buildings.

13. The carryout presently has a lighted sign which projects out from the face of the building. The operator testified at the hearing that the sign would be changed to be one which is flat against the wall of the building. The operator further testified that, if the application were approved, the air conditioner which projects out from over the window would be removed and relocated to the roof. The relocation of the air conditioner and the sign would improve the appearance of the building and make it less obtrusive in the area.

14. Advisory Neighborhood Commission - 2B, by statement of the Chairman of its Zoning Committee, opposed the application. It was the feeling of the ANC that non-conforming uses should be allowed to lapse, that the property at 1245 20th Street was already vacated, that it would be inconsistent with the theory of non-conforming uses to reinstate a new commercial use and that the granting of a succession of non-conforming uses would amount to rezoning the property. The ANC was further concerned that, if the restaurant were approved, a liquor license would be obtained which would conflict further with the character of the SP-2 District.

15. The Dupont Circle Citizens Association opposed the application on the same grounds as the ANC. The association also argued that the non-conforming uses had lapsed, that a new non-conforming use could not be permitted, that the Board should not permit the extension of a non-conforming use and that Sub-section 7105.2 of the regulations does not allow structural alterations to a non-conforming use.

16. As to the issues and concerns of the Advisory Neighborhood Commission and the Dupont Circle Citizens Association, the Board finds as follows:

- a. While the space proposed to be used as a restaurant is presently vacant, the applicant has not abandoned the non-conforming use and has not lost the right to reinstate a non-conforming use on the premises. Abandonment requires a showing that deliberate physical changes have been made to the building to render the building not suitable for the non-conforming use. In the subject application, the premises have been vacant for only three months. The applicant has diligently pursued the use of the building as a restaurant, and has exhibited no intention to discontinue the commercial use of the premises. None of the elements of abandonment are present in this application.
- b. Under the Zoning Regulations, the applicant has the right to continue indefinitely a non-conforming use. Further, under Sub-section 7104.2, the applicant has the right to request this Board to approve a change from one non-conforming use to another. The present application is thus consistent with the theory and practice regarding non-conforming uses as set forth in the Zoning Regulations.

- c. The applicant is not requesting rezoning of the property from the Board of Zoning Adjustment. As clearly set forth in the Zoning Act (D.C. Code, Section 5-420), "The Board of Zoning Adjustment shall not have the power to amend any regulations or map." The present application seeks a special exception which the Board is clearly authorized to consider by the Zoning Regulations.
- d. The question of whether a liquor license is to be issued to the subject restaurant is outside the jurisdiction of this Board. Those licenses are within the jurisdiction of the Alcoholic Beverages Control Board. The Board notes however that there is nothing in the Zoning Regulations or the SP District which permits or prohibits the serving of alcoholic beverages in any restaurant permitted in the SP District.
- e. The subject application is not an "extension" of a non-conforming use, as that theory is used in the regulations. The application is properly being processed as a change from one non-conforming use to another. Furthermore, even if the application were to be considered an extension, the same standards would apply.
- f. Structural alterations cannot be made in the case of an extension. Section 1202 of the regulations defines a structural alteration as "any change in the permanent physical members of a building or other structure, such as bearing walls or partitions, columns, joists, rafters, beams or girders." No structural alteration will be made as part of this application, the only alteration being the removal of an interior, non-load bearing partition.

CONCLUSIONS OF LAW AND OPINION:

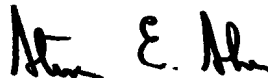
Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted such an exception, the applicant must demonstrate that he has complied with the requirements of Sub-section 7104.2, Section 7109 and Sub-section 8207.2 of the Zoning Regulations. The Board concludes that the applicant has so complied. The proposed use is permitted in the most restrictive district in which the existing use is permitted. The proposed commercial use will generally be consistent with the existing character of the area, and will be no more intensive than the previous use.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled by statute, but for the reasons stated, concludes that this application should be granted. The Board further concludes that the special exception can be granted as in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said regulations and maps. It is therefore ORDERED that the application is GRANTED.

VOTE: 4-0 (Connie Fortune, Charles R. Norris and Leonard L. McCants to GRANT; William F. McIntosh to GRANT by PROXY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 31 OCT 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.

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